IN THE HIGH COURT OF BOMBAY AT PANAJI

CRIMINAL MISC. APPLICATION (MAIN) NO. 263 OF 2006

Shri Sudhir Parihar,
S/o. Shri Ram S. S. Parihar,
R/o. Shree Darshan,
Davolim, Ponda
Goa 403 401. .....Petitioner/Applicant
(Original Complainant)

V e r s u s

1. Shri Ravi Shankar Singh Bhadauria

2. Mrs. Reena Singh Bhadauria
Both residents of 2,
Namdar Manzil,
4th Pasta Lane, Colaba,
Mumbai 400 005 (Original Accused)

3. State of Goa,
(Through Public Prosecutor) .....Respondents

Mr. P. P. Singh, Advocate for the Appellant.

Mr. I. Khan, Advocate for Respondent nos. 1 and 2.

Mr. C. A. Ferreira, P.P. For Respondent no.3.

CORAM: **N. A. BRITTO, J.**

DATE: **21st April, 2007**.

ORAL JUDGMENT

In this petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner who is the Complainant in C.C.

no.114/P/2004/A, assails the Order dated 15.02.2006 of the learned Additional Sessions Judge, Panaji, by which the learned Additional Sessions Judge has set aside the Order dated 05.03.2005 of the learned J.M.F.C., Ponda, issuing process against the accused (Respondent nos. 1 and 2 herein), under Sections 499/500 I.P.C.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said complaint.

3. The Complainant is the elder brother of Sushil, who married Suniti, the daughter of the accused. There is no dispute that the said Sushil and the said Suniti, for the first time on 08.06.2002 and thereafter got civilly married on 23.04.2003, and religiously on 26.05.2003, and, as fate would have it, to live together only for a period of five months one day.

4. According to the Complainant's father, the said Suniti abandoned the conjugal domicile on 28.10.2003, but according to the said Suniti, she was kicked out from her matrimonial home on 28.10.2003 and since then, she was instrumental in filing several cases against the family of the members of the Complainant. The first was filed on 20.02.2004, bearing no. 58/Misc/04 against the Complainant, his brother, their parents and their sisters in law

under Section 406, 420, 498-A read with Section 34 I.P.C., etc., which is pending before 47th Court of Additional Chief Metropolitan Magistraste, Esplanade, Mumbai. The second was filed on 05.03.2004 under the same sections at Cuffe Parade Police Station. The third case was filed on 01.05.2004, against the brother and father of the Complainant under Section 500 read with Section 34 I.P.C. and which is also pending before the same Court.

5. The subject matter of the complaint filed by the Complainant is a notice dated 24.07.2004, sent by Chaturvedi & Chaturvedi, Advocates on behalf of the parents of the said Suniti to Advocate Shri Shrikant Nayak, being the Advocate of the Complainant's father. The said notice was also the subject matter of another complaint filed by the Complainant's father bearing no. 114/P/04/A, in which also process was issued by the learned J.M.F.C. but was set aside by the learned Additional Sessions Judge and whose Order was challenged in CRMA (Main) No. 263/2006, which has been dismissed by this Court, yesterday, 20.04.2007.

6. The said reply dated 24.07.2004 was sent on behalf of the parents of the said Suniti by the said Advocates Chaturvedi & Chaturvedi in reply to the Complainant's father's notice dated 28.06.2004, in which he had demanded

from the parents of the said Suniti, a sum of Rs. 3,91,253/-, being the expenditure incurred by him in connection with the marriage ceremony of his son Sushil with the said Suniti.

7. The relevant part of the said notice which is considered as defamatory by the Complainant, and on the basis of which the complaint was filed, reads as follows:

> "17. Our clients had reliable information, which he believe to be true that your client's Elder Son was got married earlier with a Christian Girl, whose parents had given huge dowry to your client but your client had thrown her out usrupting her all Stridhan, Jewellery, etc., worth lacs of rupees. Ultimately, she left India and gone abroad. Despite this suppressing these facts, your client got remarry his Elder Son who committed bigerry without divorcing his early wife. Our clients are gathering more evidences on this information. Similar modus-operandi adopted in case of our clients daughter. Now your client was to remarry again Mr. Sushil as to your lure another rich girl and demand & get DOWRY again, so he will get four times encashments of his two Sons (Bearer Cheques as per his words), this is illegal enrichment by so called Businessman of Goa."

8. As per the Complainant, the accused alleged in the said notice that he was earlier married to a Christian girl upon accepting huge dowry, jewellery items and his wife was thrown out of the house without divorcing and without giving her belongings, which made her to leave the country and to go to a foreign country. The said notice was received by Advocate Shri Shrikant Nayak, at Ponda, and its contents were read by his staff members and the staff members of Advocate Shri Shrikant Nayak, at Ponda, and its contents were read by his staff members and the staff members of Advocate Shrikant Nayak probably conveyed the contents of the said defamatory statements to his friends. The Complainant stated that when the said notice dated 24.07.2004 was received by Advocate Shri Nayak, during that time, his wife was in Goa and she also came to know about the said defamatory contents. His wife read the contents of the said notice and she believed it to be true and she cried continuously. His wife also strongly passed comments on his character. His wife also telephoned his in laws, who are based in U.P. and she revealed the contents of the said notice to them and, as a result, they also started believing whatever was stated in the said notice, could be true and his in laws even went to the extent of taking back his wife from his house, to their house and his marriage came at stake. The Complainant also stated that his in laws even told his wife that in case she does not want to stay with him, she can go ahead with

the separation proceedings. As per the Complainant, because of the said notice dated 24.07.2004, his reputation was maligned and he was subjected to mockery amongst his friends, relatives and colleagues and he too underwent mental harassment and there were frequent quarrels between him and his wife on account of the allegations in the said notice.

9. On behalf of the Complainant, it is submitted that the learned Additional Sessions Judge, was not at all justified in setting aside the Order of the learned Magistrate, issuing process against the accused. Learned Advocate has further submitted that the case was only at a prima facie stage and at the trial, the Complainant would have examined other persons, who felt that the Complainant's reputation had suffered by the said publication. On the other hand, it is submitted on behalf of the accused that there was no publication of the said so-called defamatory statements contained in the said notice, since, the said notice was sent by the accused, being the parents of the said Suniti to the Complainant's father, through their respective Advocates and in support of this submission, learned Counsel has placed reliance on a decision of Kerala High Court in the case of ***P. R. Ramakrishnan v. Subbaramma Sastrigal & anr. (AIR 1988 Kerala 18)***, which was followed by the Madras High Court in ***B. P. Bhaskar v. B. P. Shiva (1993 CRI. L. J. 2685)***.

10. Admittedly, the said alleged defamatory statements were conveyed by the accused, the parents of the said Suniti, to the latter's father in law i.e. the Complainant's father, through their respective lawyers and no third person was involved in the same. In the case of ***P. R. Ramakrishnan v. Subbaramma Sastrigal & anr.*** (supra), Justice K. T. Thomas, as he then was, held that sending of a communication to an Advocate on behalf of his client, is virtually a communication made to the client himself and as such, there is no publication of the said imputation concerning the client. The same view was followed by Madras High Court in the case of ***B. P. Bhaskar v. B. P. Shiva*** (supra). In the aforesaid case, it was noted that the receipt of notice by the Complainant by itself is not sufficient to amount in law as publication. I have my respectful agreement with the views held by Kerala and Madras High Court, in the decisions referred to herein above. Therefore, in my view, it could not be said that by sending the said notice dated 24.07.2004, the accused, being the parents of Complainant's sisters in law, had in any way defamed the Complainant, because no third person was involved in it.

11. One of the foremost ingredients of Section 499/500 is the making or publishing of an imputation concerning any person. The imputation in this case might have been made by the accused, the parents of the Complainant's sisters in law, the said Suniti, but certainly, it was not published by them to

any third person. The word "publishes", obviously has been used in its etymological sense as connoting "to make public" or to make known to the people in general. To quote from *Halsbury's Laws of England, Third Edition, Volume 24 Page 35*, "publication consists in making known the defamatory statement, after it has been reduced into some permanent form." The Complainant himself appears to be in the dark as not to know as to who published the contents of the said notice. Was it his own father? As per the Complainant, it is the staff members of Advocate Shri Nayak, who probably conveyed the contents of the said defamatory statement to some of his friends and, if that is so, the accused, the parents of the Complainant's sisters in law, could not have been faulted for the same but the said staff members of Advocate Shri Shrikant Nayak, who ought to have been proceeded for publication of the defamatory statements made on behalf of the accused through their Advocates, to the Advocate of the Complainant's father. It is also relevant to note that the Complainant chose not to examine any of his friends who came to know about the said defamatory statement through the staff members of Advocate Shri Shrikant Nayak, and, who thought that the said defamatory statements had lowered the reputation of the Complainant and what is stated by the Complainant whether in his complaint or the statement on oath, in that regard, is nothing but hearsay on the basis of which also, no process could have been issued.

12. The decision in the case of ***Mahanand Ranghdale v. Ku. Kiran & Anr. (1993 (2) Crimes 532)***, relied upon, on behalf of the Complainant, has no application to the facts of the case at hand. That was a case where an Advocate was also sought to be prosecuted under Section 499/500 I.P.C., having drafted certain pleadings, and, it was held that as an advocate, acts on the instructions of his client, his case is covered under 8th and 9th Exceptions to Section 499 I.P.C., in a complaint for defamation in pleadings filed in the Court.

13. On behalf of the accused, reliance has been placed on ***M/s. Pepsi Foods Ltd. & anr. v. Special Judicial Magistrate & Ors. (1998 CRI. L. J. 1)***. In this case, the Apex Court has observed that summoning of an accused in a criminal case is a serious matter and Criminal Law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate is not a silent spectator at the time of recording preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself would put

questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegation or otherwise and then examine if any offence is prima facie committed by all or any of the accused. As far as the publication of the alleged defamatory matter contained in the said letter, the Complainant had adduced no evidence whatsoever and what the Complainant had stated was nothing but hearsay on the basis of which no process could have been issued against the accused.

14. The essence of the offence of defamation, is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which a person is held by others. The commission of offence of defamation or publishing any imputations concerning any person must be “intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person. The complaint in this case was filed on 12.10.2004. The Complainant did not even chose to examine any of his friends who had, if at all read the contents of the said letter and found that on account of the same, the Complainant's reputation had suffered. In such a situation also, there was no

question of the learned Magistrate having issued process against the accused. It appears that this complaint was filed only as a counter blast for the prosecutions launched against the Complainant and/or his family members by the Complainant's sister in law in Mumbai.

15 . In view of the above, the conclusion arrived at by the learned Additional Sessions Judge, could not be faulted. There is no merit in this application, hence the same is hereby dismissed.

N. A. BRITTO, J.

arp/*